

DBE COMPLIANCE PROGRAM

A. Instructional Guide

**Virginia Department of Transportation
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A. Introduction

The program's intent is to provide for early identification of possible concerns with credit allowances, allow for timely notification of findings, provide assistance for corrective actions to ensure compliance with implementing guidelines, and assure that credit is received for the maximum participation allowable.

The primary objectives are to:

- ❖ Determine whether the DBE firm is performing a commercially useful function as stated in appropriate guidelines.
- ❖ Identify areas where technical assistance is needed and provide information on sources available to provide such assistance.
- ❖ Determine the amount of expenditures that can be credited toward the Contractor's DBE project requirements based on the performance of a commercially useful function by the DBE firm(s).

To assure a thorough review of all the responsibilities of the DBE firm, the compliance review process is designed to collect relevant data from all available sources, including but not limited to, the project inspector, the DBE firm, and the prime contractor.

This Compliance Instructional Guide has been developed as a means of providing the necessary guidelines for conducting DBE compliance reviews. The following provides an outline of individual and division responsibility in administering and monitoring the DBE Compliance Program and an overview of the forms used in the compliance review process.

RESIDENT ENGINEER RESPONSIBILITIES

The Resident Engineer is responsible for administering and enforcing all applicable specifications, provisions, associated policies, procedures, and guidelines relating to the contract. The Resident Engineer or his/her designated representative should work closely with the District Equal Opportunity Manager (DEOM) on issues relating to the compliance program. It is critical that the Resident Engineer, Project Inspector, and DEOM work together to ensure a comprehensive effort is put forth in monitoring, observing, and assessing each DBE's performance.

PROJECT INSPECTOR RESPONSIBILITIES

The role of the project inspector in this program cannot be overemphasized. An inspector serves as the initial and first line observer of the DBE's work activities, assesses whether the work is proceeding within program guidelines, and, on federally funded projects, whether it is in accordance with the subcontract agreement. Project inspectors are responsible for monitoring DBE compliance on construction projects just as they monitor other contract requirements and should be aware of the criteria set out in the appropriate guidelines.

An inspector should work closely with the DEOM, advising them of the commencement of work by the DBE subcontractor and, through the Resident Engineer, report any activities that may suggest non-compliance. **The Project Inspector is to complete Schedule B as soon as the DBE firm begins their initial work on the project.**

The information recorded on Schedule B should be based on observations of the work activities and review of any necessary and related documents. **A copy of the Schedule B covering the initial work is to be sent to the DEOM and the original retained as part of the permanent project records. An additional or revised Schedule B should be initiated by the project inspector at any time there is a significant change in work patterns, crews, equipment, etc. by the DBE firm.**

Observations and requests by the inspectors generally will represent the highest priority for compliance reviews to be undertaken. The project inspector, through the Resident Engineer, should inform the DEOM promptly of any problems or concerns involving the DBE firm or the prime contractor's use of the DBE firm. The inspector will actively participate in the review process by providing any relevant information obtained in the daily monitoring of the DBE firm's activity. This information will be used in assisting the DEOM in the completion of Schedule C.

DISTRICT EQUAL OPPORTUNITY MANAGER'S RESPONSIBILITIES

The DEOM's are responsible for assuring compliance with Department DBE policies within their respective districts. Their responsibilities shall include, but not be limited to the following:

- A. Visiting each project to review DBE activity with the project inspector. The DEOM will assess the work activities and related administrative features of the DBE's performance throughout the duration of the project for compliance with the DBE program regulations.
- B. Assisting Residency & District personnel and contractors in interpreting and understanding the DBE program policies, procedures, and guidelines for administering the DBE program. The DEOM should interact promptly with District, Residency, and/or Central Office personnel when needed to resolve problems.
- C. Notifying the prime contractor immediately of any problems identified with the DBE firm. The DEOM will work cooperatively with the prime contractor for possible resolution and corrective action.
- D. Scheduling and conducting compliance reviews on at least 50% of projects with DBE requirements and developing reports in the appropriate format.
- E. Contacting VDOT Supportive Service representatives to assist DBE firms in need of technical and/or management assistance. The DEOM will identify and solicit from project personnel areas in which the DBE requires assistance. The District Supportive Service representatives will work with the DEOM to discuss DBE needs and coordinate activities.

EQUAL OPPORTUNITY DIVISION RESPONSIBILITIES

The EO Division Administrator is responsible for monitoring the DBE compliance program and implementing policies and procedures that will enable the Department to achieve its compliance program objectives. The EO Division Administrator has a significant role in working with the Construction Engineer in the development of construction policies and procedures affecting the DBE program.

- A. The EO Division will have oversight responsibility for compliance reviews and may request such reviews be scheduled when deemed appropriate.
- B. The EO Division will provide guidance to DEOM's; in conducting reviews, gathering data, and other compliance activities on an as needed basis.
- C. The EO Division Administrator will provide the final review and sign all compliance reviews.
- D. The EO Division is responsible for training and assistance to District and Residency staff on carrying out the policies and procedures established for conducting compliance reviews.

CONSTRUCTION DIVISION RESPONSIBILITIES

The Construction Division is responsible for developing the governing specifications, technical guidelines, and procedures used in managing, monitoring, and making compliance determinations in the DBE Program.

The Construction Division will:

- A. Review and provide appropriate comments on all compliance reports in which a noncompliance determination has been rendered.
- B. Be responsible for technical training of the EO Division, District and Residency staff, and the industry on CD memoranda and other guidelines relating to the DBE Program and compliance determinations.
- C. Implementing sanctions in accordance with contract specifications.

SCHEDULING DBE COMPLIANCE REVIEWS

After a project has been identified for a review, every effort will be made to schedule a review during the initial stages of work. The information gathering process, in some cases, can begin as early as the pre-construction conference or before.

A compliance review may be initiated as a result of a request from inspectors, certification or compliance section, or for any other valid reason. The following issues may be significant and merit consideration when establishing the order of conducting compliance reviews:

1. Where the prime contractor or the DBE firm has a history of problems relating to program participation, especially prior cases of non-compliance.
2. Projects where there is substantial allowable credit involved.
3. Initial contracts for DBE firms.

4. Limited on-site time for the DBE(s) performing on the project.
5. Situations where the DBE owns less than 100% of the company, especially 51/49% arrangements, as identified by Central Office certification staff.

COMPLIANCE DETERMINATIONS & NOTIFICATIONS

A compliance determination will be rendered based on all the information obtained through the review process. An In-Compliance determination requires the submittal of the cover sheet, Schedules A, B, C, and the signature page. A Non-Compliance determination requires the submittal of the cover sheet, Schedules A, B, C, F, and the signature page. Schedules D and E may be submitted to support the determination. The amount of participation credit disallowed must be indicated on the Schedule C form.

In potential non-compliance situations, any concerns must be communicated to the prime contractor. Verbal notification should be given during the review process that concerns have arisen and the need for clarification exists. At this time a meeting will be scheduled and any additional information * requested. Notification of the scheduled meeting must be copied to the EO Division Administrator and Construction Engineer.

Any additional information requested must be submitted within 15 calendar days. The District may, upon receipt of a written request giving sufficient justification, grant a one-time extension not to exceed seven calendar days. **If the requested information is not submitted within the established time limit, the compliance determination will be based on the information available. If such information is not sufficient to allow a conclusive determination of compliance, then a finding of non-compliance will be automatically invoked.**

When required, the meeting (interview process) is a major part of the compliance determination. The District may, upon written request giving sufficient justification, grant a one-time seven-day extension of the scheduled meeting date. Should the prime and/or DBE fail to appear for the meeting, the compliance determination will be based on the information available. If such information is not sufficient to allow a conclusive determination of compliance, then a finding of non-compliance will be automatically involved.

Any failure to submit requested information and/or failure to appear for an interview should merit serious consideration in making a compliance determination. Such failure demonstrates, at a minimum, a lack of cooperation on the part of the contractor(s) involved.

The compliance determination is rendered based on information obtained, project site monitoring, and interviews with appropriate individuals. The contractor must be notified in writing, within three (3) working days of the compliance determination being made, with copy to the Resident Engineer and EO Division Administrator. When applicable, the letter of notification must address the items or portions of work for which credit is being disallowed and the dollar amount involved. The regulations, which support the disallowance, must be referenced in the letter. Also, any corrective actions that have been implemented should be included.

COMPLETING REVIEW REPORT & SUBMITTAL

Upon completion of the compliance review, the DEOM will, within seven (7) working days, submit the report to the EO Division Administrator. The EO Division Administrator will review the report and, if appropriate, sign within three days of receipt. If discrepancies or concerns arise, the EO Division Administrator will contact the DEOM for clarification. The EO Division Administrator will decide to make any corrections, return the review to the DEOM, or finalize the review by signing.

Compliance reviews with non-compliance determinations will be forwarded to the Assistant Commissioner and Construction Engineer for comments prior to forwarding to FHWA. The Assistant Commissioner and Construction Engineer will have five (5) working days to provide any comments on the compliance review.

Completed compliance reviews will be forwarded to the appropriate DEOM with a copy to the Construction Engineer.

COMPLIANCE REVIEW FORMAT

The Compliance Review Report consists of a cover sheet, six schedules, and a signature page. The following is a brief description of the reporting forms:

Cover Sheet

The purpose of the cover sheet is to give the reader general information at a glance. All sections of the cover sheet will be completed and submitted with each report.

SCHEDULE A: COMPLIANCE REVIEW CHECK LIST

Schedule A is used to show the documentation evaluated in the compliance review process. This schedule must be included in all reviews submitted. It is not necessary to submit the documents identified on the form. This information should be maintained in the District's project files.

SCHEDULE B: PROJECT INSPECTOR'S REPORT

The project inspector will complete a Schedule B for each DBE firm through which participation credit is being sought. This report is to be submitted to the DEOM as soon as the DBE begins work on the project. Additional or revised Schedule B forms may be submitted by the inspector upon request or as deemed necessary. Copies of all Schedule Bs are to be retained as part of the permanent project records.

Schedule B must be included with all compliance reviews submitted. The Schedule B submitted with the review must have been completed within thirty days of the submittal date.

SCHEDULE C: COMPLIANCE REVIEW RECAP SHEET

Schedule C is to be completed by the DEOM and must be included in all compliance review reports submitted. The compliance determination and credit allowance must be stated on the schedule.

SCHEDULE D: PRIME CONTRACTOR'S REPORT

Schedule D is used to obtain additional information from the prime contractor. This form is to be completed by the prime in situations where concerns arise which may result in noncompliance. This schedule may be submitted in support of a non-compliance determination. Any Schedule D completed but not submitted with the compliance review must be maintained in the District's project files.

If an approved non-DBE subcontractor has secured the participation of a DBE firm for which the prime is seeking DBE participation, the prime may be required to secure a Schedule D from the non-DBE subcontractor.

SCHEDULE E: DBE SUBCONTRACTOR REPORTS

Schedule E is used to obtain additional information from a DBE subcontractor. A separate Schedule E has been developed for a DBE Supplier/Manufacture (Schedule E1) and DBE Hauling Firm (Schedule E2). Completion of the appropriate Schedule E may be required when concerns arise which could result in non-compliance. Any Schedule E completed but not submitted with the compliance review must be maintained in the District's project files.

SCHEDULE F: NON AND PARTIAL COMPLIANCE SUMMARY

This Schedule must be submitted when a non-compliance determination has been rendered or when DBE participation credit is disallowed. This schedule details the specifics surrounding the determination. It is essential that the act(s) of commission or omission, which resulted in the non-compliance determination, and/or disallowance of credit be covered.

SIGNATURE PAGE

The signature page is signed by the DEOM or the DEOM's appointed representative responsible for conducting the compliance review. The EO Division Administrator's signature finalizes the review.

CONCLUSION

The submittal of the Compliance Review Report does not complete the monitoring of DBE participation on the project. An on-going effort must be maintained to ensure compliance with program guidelines throughout the performance period.

SCHEDULE E
DBE SUBCONTRACTOR REPORT

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II. ACTUAL SUPERVISING

- A. Name of your supervisor on this project: _____
- B. Years of construction supervisory experience on items of work being supervised on this project: _____
- C. Length of employment with your firm: _____
- D. Was this supervisor employed by the prime prior to your work commencing on this project? __YES__ NO
- E. Was the prime consulted or involved in the hiring of this superintendent? __YES__ NO.
- F. List below any other individual(s) who provided supervision to your firm on this project:

Name	Percentage of Time on Project

- G. What percentage of actual supervision does your firm provide? _____%

(a) ACTUAL PERFORMING

- A. EQUIPMENT - List the following information and attach all equipment lease agreements executed by your firm which have not been previously submitted:
1. Equipment used by your firm on this project (Type of equipment and number)
 2. Source from which equipment was obtained (Owned, leased from leasing firm, leased from prime, or other).
 3. Source from which the equipment operator was obtained (Your firm's employee, employee of prime, employee from another subcontractor, or other)

1. Description & Number	2. Source of Equipment	3. Source of Operator

Total Pieces of Equipment used on this project by your firm _____.

SCHEDULE E
DBE SUBCONTRACTOR REPORT

B. LABOR - List below all non-supervisory employees used by your firm who are employed by the prime contractor, a temporary agency or another subcontractor.

Classification & Number	Source of Employment	Length of Employment With Your Firm

Name and title of person completing this form

Signature of person completing this form

Signature Date